

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re Application of: | Steve Kangas |
| Application No.: | 10/658729 |
| Filed: | September 9, 2003 |
| Patent No.: | 7544381 |
| Issue Date: | June 9, 2009 |
| For: | Lubricious Coatings for Medical Device |
| Examiner: | Cachet I. Sellman |
| Group Art Unit: | 1792 |

Mail Stop _____
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2B-10814-US01

Application for Patent Term Adjustment, 37 CFR 1.705

The patentee hereby requests reconsideration, under 35 USC 154 (d), of the Determination of Patent Term Adjustment made by the Director as indicated on the Issue Notification and on the face of US 7544381, issued 06/09/2009, copies of which are attached hereto.

As indicated on the face of the patent and on the Issue Notification, the adjustment to patent term is 1036 days. Also attached is the PAIR record showing the basis for this determination. The determination is incorrect.

The application was filed on September 9, 2003 and so is entitled to the benefit of the current version of 35 U.S.C. 154. The determination fails to follow the calculation method required by law as determined in *Wyeth v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), currently on appeal to the Federal Circuit, which is controlling law for the issues presented herein.

This Application constitutes a request that the patent term adjustment be made in accordance with the determination method described in the *Wyeth* case. Applicant also requests that the decision on this petition be held in abeyance pending final adjudication of the *Wyeth* case.

- (1) This request is accompanied by the fee set forth in §37 CFR 1.18(e).
- (2) This request is timely filed as it is being filed on 8/10/2009. The patent issued 6/19/2009 and the two month date for petitioning the commissioner fell on a Sunday, 8/09/2009. Under the patent statutes, the patentee is entitled to file this petition on the Monday immediately following the Sunday due date. This request could not have been filed prior to the issuance of the patent as the "three year" delay days could not have been determined until the issuance date. To that end, Petitioner notes that a petition filed by this law firm prior to the issue date, in application **10/658729**, was held in abeyance pending issuance of the patent in a decision in which the Office stated:

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

and further:

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

- (3) Statement of the facts involved:
 - (i) The correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment is as follows:

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| USPTO delay days to the issuance of the first Office Action | 1057 |
| Applicant delay days | -21 |
| Non-overlapping three year days (excluding days subsequent to filing of RCE) | +1004 |

- (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are explained as follows:

The Office calculation of 1036 days fails to recognize any "three years" delay days. As *Wyeth* establishes, this is improper. This application was pending for more than three years as of 09/09/2006. No time was consumed by an interference proceeding under 35 U.S.C. 135(a); no time was consumed by the imposition of a secrecy order under 35 U.S.C. 181; by review by the Board of Patent Appeals and Interferences or a Federal court. Applicant is entitled to an additional adjustment to the patent term based on the delay between the three year -date (09/09/2006) and the issue date of (06/09/2009), and adjusted to take into account overlap between the "three years" delay days and the delay beyond 14 months. In this case, the overlap period extended from **09/09/2006 to 10/02/2007**.

All delay in the processing of the application by the Office that was requested by the applicant has already been accounted for.

From and including 09/09/2003 through 06/09/2009, the date of issuance, the number of three years days was **1004** days. Subtracting the overlap of **388** days of USPTO delay falling in this same interval, for which the patent term has already been credited, and the Applicant's delay of **21 days** leaves a balance of **616** days, which balance should have been added to the **1036** days calculated for the adjustment as of the date of the Determination. Thus the total adjustment that should have been shown on the face of the patent 35 USC 154 (b) was **1652** days.

- (iii) The patent is not subject to a terminal disclaimer.

- (iv) (A) The applicant does not believe that there are any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704, other than those already accounted for in the applicant delay days noted above.

All items required under 37 CFR 1.705 having been provided herein, the applicant requests that the Patent Term Adjustment be corrected to show an adjustment of **1652** days.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: August 10, 2009

By: /Lisa Ryan-Lindquist/
Lisa R. Lindquist
Registration No.: 43071

6640 Shady Oak Rd., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001

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United States Patent and Trademark Office
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Phone: (202) 279-2000

| APPLICATION NO. | ISSUE DATE | PATENT NO. | ATTORNEY REFERENCE NO. | CONFIRMATION NO. |
|-----------------|------------|------------|------------------------|------------------|
| 106654729 | 06/04/2009 | 7543381 | 5632-10814-0501 | 2790 |

VEDAS, ARRETT & STEINKRAUS, P.A.
SUITE 400, 6640 SHADY OAK ROAD
EVEN PRAIRIE, MN 55344

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 1036 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

Steve Kangas, Woodbury, MN;



US007544381B2

(12) **United States Patent**
Kangas(10) **Patent No.:** **US 7,544,381 B2**
(45) **Date of Patent:** **Jan. 9, 2009**(54) **LUBRICIOUS COATINGS FOR MEDICAL DEVICE**(75) Inventor: **Steve Kangas**, Woodbury, MN (US)(73) Assignee: **Boston Scientific Scimed, Inc.**, Maple Grove, MN (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(h) by 1036 days.

(21) Appl. No.: **10/658,729**(22) Filed: **Sep. 9, 2003**(65) **Prior Publication Data**

US 2005/0055044 A1 Mar. 10, 2005

(51) Int. Cl.
B05D 3/06 (2006.01)
A61L 27/50 (2006.01)
C03C 25/24 (2006.01)(52) U.S. Cl. **427/2.1; 427/558; 522/52; 522/149; 522/96; 522/109**(58) **Field of Classification Search** **427/2.1-2.31; 427/558; 522/32, 96, 149**
See application file for complete search history.(56) **References Cited****U.S. PATENT DOCUMENTS**4,372,620 A * 6/1981 Ichimura 525/61
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EP 0373882 6/1990**OTHER PUBLICATIONS**

Pasciet, Development of Photo-Polymerizable Polyvinyl Alcohol for Biotechnological Applications, Apr. 28, 2003, pp. 330-336.

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Primary Examiner—William Phillip Fletcher, III
Assistant Examiner—Cachet I Sellman
(74) *Attorney, Agent, or Firm*—Vidas, Arrett & Steinkraus, P.A.(57) **ABSTRACT**

An ultraviolet curable lubricious coating including at least one lubricious polymer and at least one oxygen-insensitive crosslinkable polymer, methods of making and using the same, and articles coated therewith.

11 Claims, 1 Drawing Sheet

